Reserved

HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 1085 of 2001
Old No. 325 of 1996

Smt. Kamla Kumari ..... Appellant

Versus

Sunil Kumar & another .... Respondents

Sri Rajendra Dobhal, Advocate for the petitioners.
Sri D.S. Patni, Advocate for respondents.

Dated: June 29,2004

Hon.M.M. Ghildiyal J.
Hon. Rajesh Tandon, J.

Delivered by Hon. Rajesh Tandon, J.

This is an appeal against the judgment and award dated 24.2.96 passed by the Motor Accident Claims Tribunal, Uttarkashi.

The petitioners have filed a petition under section 166A of M.V. Act, for the grant of compensation due to the death of Kuldip Singh. The deceased was working in Tehri Hydro Development Corporation and was getting salary of Rs. 2,270/- per month. The petitioners were the father and mother of the

deceased. It appears that Veer Singh father of the deceased died during the pendency of the petition.

The petitioners have stated that the deceased died in a motor vehicle accident on 5.12.1992 at 3.30 PM at Barethi Chungi Chawki, Uttarkashi involving Martuti Van No. UP 08/669. It has been alleged by the petitioners that the accident was caused due to rash and negligent driving by the driver of the vehicle in question. The deceased was unmarried.

Opposite parties have contested the petition and have filed their respective written statements. They have admitted the accident and death of the deceased in the motor vehicle accident but denied that the accident took place due to rash and negligent driving of the vehicle.

On the pleadings of the parties the following issues were framed:

(1) Whether the vehicle was being driven rashly and negligently by the driver of the vehicle ? if so, its effects?

(2) Whether the deceased was earning Rs. 2,200/- per month and contributing Rs.1500/- per month to the family? If so its effect?

(3) Whethe the amount of claim is exorbitant and excessive? If so, its effect?

(4) Whether the employment of the deceased was temporary nature as alleged in para no. 12 of the W.S.? if so, its effect?

(5) To what relief if any, are the petitioners entitled?

The learned claims Tribunal decided issue no.1 in favour of the petitioners and has held that the accident took place due to rash and negligent driving by the driver of the vehicle in

Question. In reply of issues no. 2, 3, 4 & 5 the learned Tribunal has held that the total income of the deceased was rS.2,270/- per month. He held that the dependency of the petitioners on the deceased for Rs.1,500/- per month and granted a lump sum amount of Rs. One lakh to the petitioner. Feeling aggrieved the present appeal ah been filed.

It appears that during the pendency of the petition petitioner Veer Singh has died and Smt. Kamla Kumari has filed the present appeal.

We have heard the learned counsel for the parties and have perused the entire evidence on record.

The main contention of the appellant is that the learned Tribunal has not properly calculated the amount of compensation and the amount awarded, as compensation is too meager.

The petitioners have contended that the deceased was working in Tehri Hydro Development Corporation and was getting a salary of Rs.2,270/- per month. P.W.1 Smt. Kamla Kumari has stated on oath that the deceased was giving Rs.1,500/- per month to her for family expenses. The claimants have filed pay slip of the deceased which shows that he was getting Rs.2,270/- per month as salary. After deducting one third of the said income for the own expenses of the deceased, if he would have been alive, the dependency of the appellant on the income of deceased comes to Rs.1,500/- per month or Rs.18,000/- per annum. At the time of his death, the deceased was 25 years of age. The claimant appellant is the mother of the deceased and was 46 years old at the time of filing of the claim petition. Another claimant Sri veer Singh, who was the father of the deceased died during the pendency of the claim petition. In

the circumstances of present case multiplier considering the age of the deceased cannot be applied for calculating the compensation. To get a right multiplier the age of the claimant should be considered in this case. At the time of death of the deceased claimant Smt. Kamla Kumari was 46 years, it can be presumed that the deceased would pay maintenance to the claimant for further 12 years. Thus by multiplying the annual dependency of Rs.18,000/- by 12 the total compensation comes to Rs.2,16,000/- per annum.

The findings of the learned Tribunal on the issue of rash and negligent driving have not been challenged by either of the parties in the appeal.

The appeal is allowed with costs. The appellant is awarded a sum of Rs. 2,16,000/- (Rs. Two lakhs sixteen thousand only) along with pendenate lite and future interest @ 9% per annum.

(Rajesh Tandon, J.) **(M.M. Ghildiyal J.)**

June 29, 2004

*Dhyani